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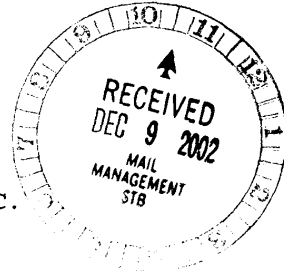
Before the

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SURFACE TRANSPORTATION BOARD

Finance Docket No. 34291

COMRAIL INTERNATIONAL RAILROAD INC.
--OPERATION EXEMPTION--
CHICAGO HEIGHTS RAILCAR, INC.



PETITION FOR STAY OF EXEMPTION ^{*}/

ENTERED
Office of Proceedings

DEC 09 2002

Part of
Public Record

GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

December 9, 2002

Attorney for Joseph C. Szabo

^{*}/ Expedited handling is requested, inasmuch as the exemption is published to otherwise become effective 12:01 AM, Wednesday, December 11, 2002.

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COMRAIL INTERNATIONAL RAILROAD INC.
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PETITION FOR STAY

Preliminary Statement

Joseph C. Szabo,^{1/} for and on behalf of United Transportation Union-Illinois Legislative Board (UTU-IL), petitions the Surface Transportation Board (Board), that it stay the operation of the Notice of Exemption (Notice), filed December 4, 2002, by Comrail International Railroad, Inc. (Comrail), pursuant to the noncarrier line acquisition class exemption,^{2/} pending disposition of UTU-IL's forthcoming petition to revoke the exemption.

Unless stayed, the exemption otherwise becomes effective at 12:01 AM, Wednesday, December 11, 2002.

Conrail is a newly-created noncarrier. It proposes to "operate over" or to "operate" some 4,200 feet of track currently owned and operated by Chicago Heights Railcar, Inc. at Chicago Heights,

^{1/} Illinois Legislative Director for United Transportation Union, with offices at 8 So. Michigan Avenue, Chicago, IL 60603.

^{2/} 49 CFR §1150.31, et seq.

IL. Conrail does not intend to acquire the trackage, by lease or otherwise, but merely to operate or operate over the trackage.

UTU-IL regards the Comrail notice as a farce. It would not have been filed but for the Board's recent decision in Finance Docket No. 34145, Bulkmatic Railroad Corporation-Operation Exemption-Bulkmatic Transport Company (served November 19, 2002) (Bulkmatic). Even the name "Comrail" is farcical--being a play on the well-known carrier named "Conrail."^{3/} UTU-IL is this day filing a petition for reconsideration in Bulkmatic. Hopefully, the Board will arrest a trend which otherwise may serve to damage the image of the Board itself.

Background

The involved 4,200 feet of track clearly is excepted trackage under 49 U.S.C. 10906. This is indicted by the sketch map itself. (Notice, Appendix 1). Comrail concedes that this switching and/or spur track ordinarily would be "excepted" from the Board's ability to authorize its acquisition or operation, but argues that the Board's unreported September 18, 1998 decision in Docket No. 41986, Effingham Railroad Company-Petition for Declaratory Order-Construction at Effingham, IL (Effingham) brings Conrail's operation of such trackage under §10901, such that Comrail becomes a STB-franchised carrier. (Notice 3-6).

The CHR trackage is not sought to be acquired by Comrail. The tracks will remain under the control of CHR--a noncarrier which does not seek to become a carrier in any respect. There is no

^{3/} Our search finds the name "Com Rail" as an acronym for "Central Oklahoma Model Rail Club."

claim that the CHR tracks would be "carrier" property. The tracks will remain "excepted" under CHR ownership and control.

The primary purpose of Comrail's notice of exemption to operate the trackage is to secure status as a STB-authorized railroad company. This is abundantly apparent from the CHR-Comrail operating agreement, attached to the unredacted and confidential copy of this request for stay as Appendix 2.

This request for stay is accompanied by the verified statement of Dennis G. Martz, who serves as General Chairman for United Transportation Union (UTU) for the Union Pacific Railroad Company (UP) at Chicago Heights, IL. Appendix 1.

UP employees stand to suffer irreparable injury if the operation of the notice of exemption is not stayed pending disposition of UTU-IL's petition to revoke.

ARGUMENT

A stay is warranted for the traditional reasons. UTU-IL has a high probability it will be successful on the merits; employees will suffer irreparable injury without a stay; other parties will not be harmed by a stay; and the public interest will be served by a stay.

1. UTU-IL Success on the Merits. UTU-IL has a very high probability of success on the merits that the Board ultimately will revoke the Comrail exemption. The trackage is switching, industrial, or spur trackage, specifically excepted from the Board's authorization pursuant to 49 U.S.C. 10906. It cannot support the weight of a locomotive. (Appendix 1, p. 2). Current operations on the trackage are performed by a trackmobile. (Id.)

If the Board were to franchise this operation, it would be licensing a motor carrier, not a rail carrier. The Comrail proposal is a farce.

The involved trackage is not intended to be brought under the Board's authorization for acquisition of the trackage. Unlike the usual "acquire and operate" or the separate "acquire" and "operate" transactions, here there is no entity which desires to bring the physical property into common carrier line status.

Appendix 2--the CHR/Conrail agreement--indicates the STB franchise is the real goal of the transaction.

Comrail's reliance upon Effingham is misplaced. Comrail would be operating on excepted trackage not brought into the national network. As the sketch map to the Notice indicates, all of the operations proposed initially to be conducted lie inside the fence of the industrial site. (Notice, App. 1).

UTU-IL has a very high probability of success it will prevail on the merits, and that the proposed exemption is outside the Board's authority. 49 U.S.C. 10906.

2. Injury to Employees. The verified statement of Dennis G. Martz establishes that UP employees would be irreparably injured if the notice is not stayed. (Appendix 1, pp. 3-4). Comrail as a franchised carrier could force connection with other railroads, and operate by trackage rights over the lines of rail carriers, either by permission, or through action under the Interstate Commerce Act.

3. No Harm to Others. Other persons would not be injured by a stay. CHR would continue to switch its own cars, and those of

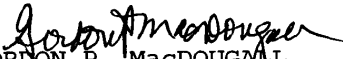
Meridian, as it has in the past. Grant of a stay would not impair present CHR operation of its trackmobile.

4. The Public Interest. The public interest would be served by a stay. The name "Conrail" would be misleading to many at this time. The Board should not lend its Government status to this enterprise at this time.

CONCLUSION

The Board should stay the operation of the Comrail notice of exemption, pending disposition of UTU-IL's forthcoming petition to revoke.

Respectfully submitted,


GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

December 9, 2002

Attorney for Joseph C. Szabo

Certificate of Service

I hereby certify I have served a copy of the foregoing upon Thomas F. McFarland, counsel for Comrail, by overnight express service, and by telephone advice and facsimile.

Washington DC


Gordon P. MacDougall

APPENDIX 1

F.D. No. 34291

VERIFIED STATEMENT
OF DENNIS G. MARTZ

My name is Dennis G. Martz. I am a Yard Foreman (and sometimes Switchman) employed by Union Pacific Railroad Company (UP) at its Chicago Terminal Complex, primarily on trackage comprising the former Chicago & Eastern Illinois Railroad Company (C&EI), and its non-operating affiliate, the former Chicago Heights Terminal Transfer Railroad Company (CHTT). My seniority dates from April 1969, when I was first employed by C&EI, and has continued with its successors Missouri Pacific Railroad Company (MP), and now UP.

I am a member of the United Transportation Union (UTU), which represents yard foreman and switchmen, and serve as its General Chairman for former C&EI operations.

I have read the notice of exemption in Finance Docket No. 34291, filed December 4, 2002 with the Surface Transportation Board (STB or Board), by Comrail International Railroad, Inc. (Comrail), a noncarrier, with respect to 4,200 feet of trackage owned by Chicago Heights Railcar, Inc. (CHR) at Chicago Heights, IL. As I understand the notice of exemption, Comrail does not seek to acquire the CHR trackage. It appears Comrail intends to "operate over" the 4,200-foot trackage or to "operate" the 4,200-foot trackage-- both terms being used by CHR in its notice of exemption. Comrail states it hopes and intends to provide similar rail operations for other entities in the industrial area of Chicago Heights.

I am fully familiar with railroad operations at the CHR facility, and have been a member of the crew serving the trackage.

The address shown for Comrail in the notice of exemption, 1555 State Street, Chicago Heights, is the same as for CHR.

The sketch of the involved trackage, set forth in Appendix 1 to the Comrail Notice, is reasonably accurate except that Track No. 814 should be labeled Track No. 105; moreover, Track Nos. 812 and 813 both connect with Track No. 105 at a point below 16th Street, not shown on the sketch. I add that the sketch obviously is not drawn to scale.

UP sets out and picks up cars for CHR on Track Nos. 812 and 813, and UP picks up and sets out cars for Meridian Wheel Co. (Meridian), formerly ABC Rail Products, on Track No. 812. UP does not perform switching for CHR or for Meridian.

CHR performs its own switching on its six tracks by means of a Pettibone trackmobile which is stationed on the CHR premises. CHR does not have a locomotive unit on the premises. CHR delivers and receives cars for Meridian, moving them to and from Track 1 and the Meridian spur track. All of the tracks inside the CHR fence are typical lightweight spur trackage, and I have been advised by UP management they cannot support the weight of a full-size locomotive. Moreover, I note these tracks are so labeled "spur" on page 9 of the Comrail notice of exemption.

There has hardly been any service by UP for CHR for approximately the past 6 to 12 months, but UP does deliver and receive cars for Meridian to be handled by CHR by its Pettibone trackmobile. I estimate the UP traffic to and from Meridian averages between 2 and 6 cars per day. UP service is available daily, six days per week.

According to information received in the course of my UP employment and UTU position, there have been payment deficiencies and/or disputes between UP and CHR, and I understand CHR itself may have encountered financial difficulties. CHR formerly had a number of employees, but it is my present understanding that CHR's active personnel consists of Stephen P. Dullard and his daughter.

I am opposed to the creation of Comrail as franchised STB-carrier to provide switching service for Meridian and, perhaps later, also for CHR. I have reviewed the agreement between CHR and Comrail. It is clear that the entire purpose of the notice of exemption is not to alter the present manner of service, but is to have the STB accord a franchise for a new carrier.

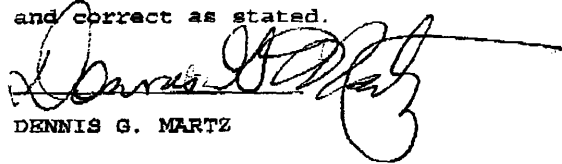
UP employees stand to be harmed by Comrail's declared intention to use a "carrier" status to serve other industries in the area, of which there are many. UP employees would lose the work of industrial switching at these facilities, and perhaps also lose transfer work between other facilities, or to and from interchange with other carriers. The extent of the injury cannot be determined at this time, and I ask the Board to stay the use of the exemption pending final determination of the forthcoming petition to revoke. The injury would be irreparable, for if Comrail is permitted to become a carrier and commence "to operate" CHR track, with terminal service for Meridian and CHR, and also as a "carrier" to reach other sites by trackage rights or as a connecting carrier, there would be no way, of which I am aware, for UP employees to recover damages under our collective bargaining agreements with UP, if UTU-IL ultimately prevails in having the notice of exemption rejected, or the exemption revoked. Of course, injury to quality

of life by reduced earnings, changes in job assignment, or loss of employment altogether, can never be fully compensated by monetary sums, and is thus truly irreparable.

VERIFICATION

STATE OF ILLINOIS
COUNTY OF COOK

Under the penalties of perjury, I hereby affirm that the foregoing verified statement is true and correct as stated.



DENNIS G. MARTZ

Dated at
Chicago Heights, IL
December 8, 2002